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FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

EXAMINER

KISS, ERIC B

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/751,918

Applicant(s)

SISTLA, RAJASEKHAR

Examiner

Eric B. Kiss

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The reply filed March 26, 2004, has been received and entered. Claims 1-21 are pending.

***Response to Amendment***

2. The Examiner again acknowledges Applicant's effort to properly distinguish and respect trademarks used within the instant application. However, the Examiner notes the following problems with Applicant's amendments:

- a. In Applicant's amended paragraph beginning at page 1, line 7, of the specification, "MICROSOFT® company" should read --Microsoft Corporation--. Note that the name of a particular company, when used to identify that company and not its products, is not a trademark.

- b. In Applicant's amended paragraph beginning at page 3, line 21, of the specification, "INTEL'S® NETPORTEXPRESS™ software" should read --Intel® NetportExpress™ software--. As noted in the previous Office action, trademarks should not be used as possessive nouns.

3. Other amendments to the specification appear to properly address the issue of trademarks, in each instance appropriately distinguishing the trademark and providing appropriate generic terminology. Accordingly, while the objection to the specification is

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maintained in this Office action, it would be withdrawn upon Applicant filing the above-described corrections.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

***Admitted Prior Art***

5. If Applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, Applicant is charged with rebutting the well-known statement in the next reply after the Office action in which the well-known statement was made. This is necessary because the Examiner must be given the opportunity to provide evidence in the next Office action or explain why no evidence is required. If the Examiner adds a reference to the rejection in the next action after applicant's rebuttal, the newly cited reference, if it is added merely as evidence of the prior well known statement, does not result in a new issue and thus the action can potentially be made final.

a) The object of the following statement is taken to be admitted prior art:

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It has been known to execute an installation program through the use of a command line (see the statement of Official Notice applied in the rejection of claim 6 in the previous Office action).

b) The object of the following statement is taken to be admitted prior art:

The installation of software as part of a mass deployment has been known and widely practiced in the computer art (see the statement of Official Notice applied in the rejection of claim 9 in the previous Office action).

### *Specification*

6. The use of trademarks has been noted in this application. Trademarks should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 102*

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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8. Claims 1-8 and 10-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,449,642 to Bourke-Dunphy et al. (hereinafter *Patent '642*).

As per claim 1, *Patent '642* discloses ***automatically loading the network protocol on the computer in response to a process-initiating event*** (see, for example, col. 7, line 42, through col. 8, line 29); and ***automatically binding an existing network adapter to the network protocol*** (see, for example, col. 7, line 42, through col. 8, line 29).

As per claim 2, *Patent '642* further discloses ***automatically rebooting the computer following said automatically binding*** (see, for example, col. 8, lines 30-33).

As per claim 3, *Patent '642* further discloses ***invoking a network operating system to perform loading of the network protocol on the computer*** (see, for example, col. 7, line 42, through col. 8, line 29).

As per claim 4, *Patent '642* further discloses ***using a binding engine of the operating system to bind the existing network adapter to the network protocol*** (see, for example, col. 7, line 42, through col. 8, line 29).

As per claim 5, *Patent '642* further discloses the process-initiating event including ***selecting a shortcut to a shared network location from the computer*** (see, for example, col. 8, lines 46-60).

As per claim 6, *Patent '642* further discloses the process-initiating event including *executing an operating system command line* (see, for example, Fig. 3a and its associated text).

As per claim 7, *Patent '642* further discloses the process-initiating event including being *part of a software setup program execution* (see, for example, col. 7, line 42, through col. 8, line 29).

As per claim 8, *Patent '642* further discloses the process-initiating event including being *part of a user login sequence to the computer* (see, for example, col. 8, lines 30-36).

As per claims 10-21, in addition to the disclosure applied above to claims 1-4, *Patent '642* further discloses such an apparatus, article, and computer system (see, for example, Fig. 1 and its associated text).

### ***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Patent '642*, as applied above to claim 1.

As per claim 9, in addition to the disclosure applied above, *Patent '642* fails to expressly disclose the process-initiating event including being *part of a mass deployment of the new network protocol*. However, it is admitted prior art that the installation of software as part of a mass deployment has been known and widely practiced in the computer art (see the discussion above under the heading "Admitted Prior Art"). An example of this is the well-known practice of an administrator pushing a software upgrade to a set of managed client nodes in a network. Additionally, *Patent '642* teaches a software application that allows for the selection from multiple client machines to manage/configure (see, for example, Figs. 4 and 16). Therefore, it would have been obvious to one having ordinary skill in the computer art at the time the invention was made to modify the method of *Patent '642* to include the loading/binding as part of a mass deployment. One would be motivated to do so, for example, to ensure that all network components, including protocols, on a set of networked computers are installed/updated.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (703) 305-7737. The Examiner can normally be reached on Tue. - Fri., 7:30 am - 5:00 pm. The Examiner can also be reached on alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EBK/EBK  
June 2, 2004



TUAN DAM  
SUPERVISORY PATENT EXAMINER